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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,391	01/22/2004	Tian Bu	Bu	4485
46368	7590	01/21/2010	1-2-28;67108-363PUS1	
CARLSON, GASKEY & OLDS, P.C./Alcatel-Lucent				
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EXAMINER				
GOLD, AVIM				
ART UNIT		PAPER NUMBER		
2457				
MAIL DATE		DELIVERY MODE		
01/21/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,391

Applicant(s)

BU ET AL.

Examiner

AVI GOLD

Art Unit

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is responsive to the pre-brief appeal decision filed October 14, 2009.
Claims 1-27 are pending.

Response to Amendment

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-22, and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Bornstein et al., U.S. Patent Application Publication No. 2002/0163882.

Regarding claim 1, Bornstein teaches an overlay network for maintaining traffic flow between a client and a server during a denial of service attack, comprising: a set of overlay nodes, coupled between the client and the server, wherein each overlay node comprises: a ranking module configured to rank the overlay nodes based on a performance metric, wherein an overlay node with a higher-ranking indicates that the overlay node has better performance for transferring traffic to the server than overlay nodes with lower-rankings (paragraph 38, lines 1-17, Bornstein discloses ranking a route's performance, which is based on its nodes, by using ping data); and

a probing module configured to probe a portion of the overlay nodes with higher-rankings more frequently than overlay nodes with lower-rankings during probing intervals (paragraph 38, lines 17-28, paragraph 43, Bornstein discloses pinging the top performing routes more frequently).

Regarding claim 2, Bornstein teaches the overlay network as recited in claim 1, wherein each overlay node further comprises a path selection module, configured to dynamically select an overlay node with a highest-rankings to be included as part of a pathway for transferring traffic to the server (paragraph 43, lines 1-4).

Regarding claim 4, Bornstein teaches the overlay network as recited in claim 1, further comprising one or more target nodes, configured to transfer the traffic from one or more of the overlay nodes directly to the server, the one or more target nodes having exclusive knowledge of an identity for the server (paragraphs 38, 43).

Regarding claim 5, Bornstein teaches the overlay network as recited in claim 1, wherein each overlay node is virtually connected to each other (paragraphs 38, 43).

Regarding claim 6, Bornstein teaches the overlay network as recited in claim 1, wherein the performance metric includes at least one of: available bandwidth, latency, loss rate, and jitter; and wherein an overlay node with a higher-ranking indicates that the

overlay node has better performance for transferring traffic to the server than overlay nodes with lower-rankings, the better performance including at least one of: more available bandwidth, less jitter, lower latency, and less packet loss (paragraphs 38, 43).

Regarding claim 7, Bornstein teaches the overlay network as recited in claim 1, wherein the ranking module is further configured to determine whether the portion of overlay nodes with higher-rankings continue to have better performance for transferring traffic to the server than one or more of the overlay nodes with lower-rankings after a probing interval (paragraphs 38, 43).

Regarding claim 8, Bornstein teaches the overlay network as recited in claim 1, wherein the ranking module is configured to demote the rankings of the portion of overlay nodes with higher-rankings to lower-rankings if the portion of overlay nodes with higher-rankings have worse performance for transferring traffic to the server than one or more of the overlay nodes with lower-rankings after a probing interval (paragraphs 38, 43).

Regarding claim 9, Bornstein teaches the overlay network as recited in claim 1, wherein the traffic is data (paragraphs 38, 43).

Regarding claim 17, Bornstein teaches the method as recited in claim 10, further comprising determining whether the portion of overlay nodes with higher-rankings continue to have better performance for transferring traffic to a target than one or more of the overlay nodes with lower-rankings after a probing interval; and promoting the rankings of one or more of the overlay nodes with lower-rankings to higher-rankings, if the portion of overlay nodes with higher-rankings have worse performance for transferring traffic to a target than one or more of the overlay nodes with lower-rankings (paragraphs 38, 43).

Claims 10-16, 18-22, and 27 do not teach or define any new limitations above claims 1, 2, 4-9, and 17 and therefore are rejected for similar reasons.

3. Claims 3 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bornstein further in view of Corrigan et al., U.S. Patent Publication No. 2004/0148357.

As to claim 3, Bornstein teaches the method of claim 1.

Bornstein does not explicitly teach an access node, configured to authenticate traffic directed to the server from the client, and forward authenticated traffic to one or more of the overlay nodes.

However, Corrigan teaches a messaging gateway for use by mobile networks (see abstract). Corrigan teaches the use of validation nodes (paragraph 51).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bornstein in view of Corrigan to use an access node, configured to authenticate traffic directed to the server from the client, and forward authenticated traffic to one or more of the overlay nodes. One would be motivated to do so because it guarantees confidentiality and integrity of all traffic.

Regarding claim 23, Bornstein teaches an overlay network to mitigate a denial of service attack, comprising: target nodes configured to transfer the traffic previously authenticated by the access nodes to the server; and overlay nodes, coupled between the access nodes and the target nodes, configured to route the traffic from the access nodes to the target nodes by selecting a best end-to-end path between the client and the server based in accordance with at least one performance metric (col. 1, line 57 – col. 2, line 14, col. 4, lines 10-29, col. 13-15).

Bornstein does not explicitly teach access nodes configured to authenticate traffic directed to the server from the client.

However, Corrigan teaches the use of validation nodes (paragraph 51).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bornstein in view of Corrigan to use access nodes configured to authenticate traffic directed to the server from the client. One would be motivated to do so because it guarantees confidentiality and integrity of all traffic.

Regarding claim 24, Bornstein teaches the overlay network as recited in claim 23, wherein each overlay node is configured to dynamically select, a best target node for accessing the server and a best path to reach that target node (paragraphs 38, 43).

Regarding claim 25, Bornstein teach the overlay network as recited in claim 24, wherein the best path is selected via a best next hop measured in terms of the at least one performance metric (paragraphs 38, 43).

Regarding claim 26, Bornstein teach the overlay network as recited in claim 23, wherein each overlay node comprises: a ranking module configured to rank the overlay nodes based on the performance metric, wherein an overlay node with a higher-ranking indicates that the overlay node has better performance for transferring traffic to one of the target nodes than overlay nodes with lower-rankings; and a probing module configured to probe a portion of the overlay nodes with higher-rankings more frequently than overlay nodes with lower-rankings during probing intervals (paragraphs 38, 43).

Response to Arguments

4. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,539,659 to McKee et al., because it discloses ranking of nodes.

U.S. Pat. No. 5,802,503 to Sansone, because it discloses nodes that are ranked and weighted.

U.S. Pat. Publication No. 2002/0002686 to Vange et al., because it discloses a method and system for overcoming denial of service attacks.

U.S. Pat. No. 7,185,077 to O'Toole et al., because it discloses performance metrics of a network and an overlay network of nodes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AVI GOLD whose telephone number is (571)272-4002. The examiner can normally be reached on M-F 8:30 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. G./
Examiner, Art Unit 2457

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457